

Application Ser. No. 10/637,888
Title: INDUSTRIAL TANK SUPPORT
Examiner Naschica Morrison, Group Art Unit 3632
Amendment Responsive to Office Action of September 3, 2004

Remarks:

Claims 1-23 were filed with the application and thus previously pending. The Examiner rejected claims 1-23, and Applicant has amended claims 1, 4-9, 13, 15, 19, and 23.

In the Office Action, the Examiner objected to the drawings as failing to comply with 37 C.F.R. § 1.84(p)(5) by not including in the specification the reference numerals 74, 76, and 78. Further, reference numerals 68 and 70 that were mentioned in the specification were not denoted on the drawings. Applicant has addressed the Examiner's objections by removing reference numerals 74, 76, and 78 from the drawings and adding reference numerals 66, 68, and 70 to Figure 1. Additionally, Applicant notes that reference numeral 24, which is discussed at page 4, lines 23 and 30 and page 15, line 15, was not denoted in Figure 4. Reference numeral 24 is to the sidewall of each leg, as discussed in the specification at page 4, line 23. Applicant has amended Figure 4 to now denote reference numeral 24. Annotated Marked-Up Sheets illustrating the drawings changes in red accompany this Amendment. Should the Applicant's amendments be acceptable to the Examiner, Applicant has also attached Replacement Sheets that are formalized.

In the Office Action, the Examiner also objected to minor typographical errors in the specification. Applicant has amended the specification per the Examiner's suggestion and also as discussed above with respect to the drawings.

In the Office Action, the Examiner objected to claims 4, 7, 8, and 9 as containing minor informalities. Applicant has amended claim 4 to change "include" to "includes." The Examiner requested that Applicant further amend claim 4 to put "tank" after "respective." However, Applicant has amended claim 4 to remove "supporting," such that placing "tank" after "respective" would then read incorrectly. Therefore, Applicant has not made the suggested amendment. The same amendments and suggestions also apply to claims 7-9. If the Examiner continues to object to claims 4 and 7-9, Applicant requests further explanation.

The Examiner also objected to dependent claim 18 under 35 U.S.C. § 112, ¶ 2, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant

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regards as the invention. In particular, the Examiner stated it was unclear whether the combination of the support and tank was being claimed or merely the subcombination of the support. Applicant respectfully traverses the Examiner's statement. Independent claim 1 claims a tank support, i.e., a support for the tank, comprising a platform and legs. Dependent claim 17, which depends from independent claim 1, further adds a stand coupled to the legs, wherein the stand is part of the tank support. Dependent claim 18, which depends from dependent claim 17, claims a stirred mounted on the stand. Claims 1, 17, and 18 are thus claiming a tank support comprising a platform, legs, a stand coupled to the legs, and a stirrer mounted on the stand. As best understood by Applicant, the Examiner appears to interpret the discussed claims as separately claiming a tank and a support. If this is the Examiner's interpretation, Applicant respectfully submits that the claimed "tank support" is clearly recited as a support for the tank and is not two separate items. Should Applicant be incorrect in interpreting the Examiner's rejection under § 112, the Examiner's additional explanation and assistance is appreciated.

In the Office Action, the Examiner rejected claims 1-4, 6-9, 13-19, and 22 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,533,456 to Regina ("Regina") in view of U.S. Patent No. 5,520,121 to Schubart et al. ("Schubart"). The Examiner further rejected independent claim 23 under 35 U.S.C. § 103(a) as being unpatentable over Regina in view of Schubart and further in view of U.S. Patent No. 5,746,405 to Dvorak ("Dvorak"). Applicant has amended independent claims 1 and 23.

Regina discloses a base for supporting workpieces, wherein the base has a tic-tac-toe hollowed platform operable to receive the tines of a forklift. A plurality of legs and a railing or frame member is secured to the base. The platform in Regina is comprised of steel sheets (column 2, line 18).

Schubart discloses a plastic pallet for positioning on the ground. The pallet is hollowed so as to receive the tines of a forklift. A bottom surface of the pallet is substantially flat so as to be positioned on the ground. A top surface of the pallet includes a generally circumferential ridge 36

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enclosing a surface 34 having a "slight downward inclination" so as to direct liquids or other material into a trough 40 positioned along a general center of the pallet.

In contrast to both Regina and Schubart, the present invention is a tank support that can be inverted so as to mount tanks having bottom ends with different configurations. For example, if a tank has a generally flat bottom, a first surface of a platform of the tank support can be positioned upwards so as to receive the flat bottom of the tank. If a second tank having a domed bottom is to be supported, the tank support can be inverted so as to present a second surface of the platform that is configured to receive the domed-bottomed tank. Thus, the present invention provides a tank support for receiving two, differently-shaped tanks.

The Examiner acknowledges that Regina does not teach first and second surfaces of the platform being differently configured. (Office Action, Page 5). However, the Examiner cites Schubart as teaching a first supporting surface (Fig. 6, # 20) that is differently configured than a second, opposite surface 34, 38. Although it is true that Schubart teaches a surface that is not substantially flat, Schubart does not teach two surfaces wherein each surface is operable to support a tank. For example, if Schubart were combined with Regina, there is no teaching or suggestion in either reference that the tank support could be inverted so as to present each surface for support of the tank. The Examiner's suggested modification of Regina merely provides Regina with the surface of Schubart; however, the modification does not provide the base of Regina with two surfaces operable to receive or support the tank. This is particularly evident when it is considered that the present invention, as claimed, requires that the tank support be inverted, such that the first surface is above the second surface or vice-versa.

To support the proposed hypothetical modification, the Examiner cites to column 4, lines 4-12 of U.S. Patent No. 3,776,435 to Smith ("Smith"), which is to a hopper-type pallet operable to direct fluid materials to a dispensing opening 14. The Examiner states that it would have been obvious to one with ordinary skill in the art to modify the second surface of Regina to be configured differently than the first surface because "one would have been motivated to provide a means for

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rigidly enclosing a container as taught by Smith.” (Office Action, Pages 5-6). At the cited section, Smith discusses other closures for the dispensing opening 14, such as “snap-fitting cover plates, threaded closure caps, or the like.” Smith is not discussing different configurations for the surface of a platform so as to receive differently-configured tanks. In fact, the cited section has nothing to do with the shape of the platform at all. The suggestion by the Examiner is incorrect because Smith does not state what the Examiner argues it states and the problem addressed by Smith does not address the problem rectified by the present invention.

Further, the problem the present invention solves, i.e., supporting an industrial tank containing corrosive material where two different tanks could be mounted on the tank support depending on which side of the support was “up,” would not be solved by Regina. Once again, Regina does not teach or suggest inverting the base. Further yet, Schubart is also not useful for such an endeavor, as it is only configured for resting on one side. If the surface with the groove and lip were inverted, the surface would be damaged. Applicant reminds the Examiner that the Applicant’s invention cannot be used as a roadmap to pick and choose among prior art references to try and find comparable structure without due consideration for the necessity of a teaching or suggestion of a motivation to combine. The concept of a tank support operable to mount two differently-configured tanks is simply not taught nor suggested by the prior art references.

Applicant also submits that there is not a reasonable expectation of success of the proposed modification. In particular, Regina teaches that the platform is comprised of steel sheets, whereas the pallet of Schubart is comprised of plastic. As the Examiner is likely aware, the manufacturing of steel versus plastic is significantly different. Thus, Applicant submits that there is no teaching or suggestion as to how one skilled in the art would know how to design and fabricate a tank support where the fabrication techniques are from such different fields. Moreover, such a combination or modification would not be considered by one skilled in the art. It is not reasonable to assume that one seeking to provide a platform of sufficient structural properties, i.e., the Regina steel platform, would look to fabricate a tank support with a view to the inherent limitations of a synthetic resin

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material, and adopt such a different configuration and fabricating technique. Similarly, it is not reasonable to assume that one looking to avoid corrosion-prone material for a pallet, i.e., Schubart, would then turn to a steel platform and adopt its characteristics and limitations as well as an entirely different method of fabrication. There is no teaching or suggestion contained within either of the references which would suggest a hypothetical modification or combination. Rather, such a combination or modification may only be reached by using Applicant's disclosure as a roadmap and then selecting features from disparate and unrelated references.

The remaining claims depend, directly or indirectly, from the discussed independent claims and therefore, should be in a condition for allowance.

Applicants attorney spoke to Examiner Morrison on December 2, 2004 in an attempt to schedule an interview at a mutually convenient time on December 7 in connection with this application but unfortunately the examiner's work schedule did not permit the interview at this time.

Examiner Morrison did indicate a willingness to conduct an interview, either in person or by telephone prior to consideration of the amendment and issuance of any further office action thereon. Applicant thus courteously requests that this amendment be entered but that Examiner Morrison contact the undersigned prior to its consideration in order to schedule an interview either by telephone or in person.

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In view of this response and the remarks herein, Applicants respectfully submit that claims 1-23 are in allowable condition and requests a corresponding Notice of Allowance. In the event of further questions, the Examiner is urged to call the undersigned. Any additional fee which might be due in connection with this application should be applied against our Deposit Account No. 19-0522.

Respectfully submitted,

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Amendments to the Drawings:

As discussed in the Remarks, the drawings have been amended as follows:

Figure 1 - Replaced reference numeral 72 with reference numeral 66; replaced reference numeral 74 with reference numeral 68; replaced reference numeral 76 with reference numeral 70; and replaced reference numeral 78 with reference numeral 72.

Figure 4 - Added reference numeral 24 to denote sidewall of leg 12.



